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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Russell L. Shaffer; and Jean
Shaffer;

Plaintiffs,

v.

Gurstel Law Firm, P.C., p.k.a.
Gurstel Chargo, P.A.;

Defendant.

No.

COMPLAINT

(Jury Trial Demanded)

I. Preliminary Statement

1. Plaintiffs bring this action for damages based upon Defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* In the course of attempting to collect a debt, Defendant engaged in deceptive, unfair and / or abusive debt collection practices in violation of the FDCPA. Plaintiffs seek to recover statutory damages, actual damages, costs and attorney's fees.

II. JURISDICTION

2. Jurisdiction of this Court, over this action and the parties herein, arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue lies in the Phoenix Division of the District of Arizona as Plaintiffs' claims arose from acts of the Defendant perpetrated therein.

III. PARTIES

3. Plaintiffs reside in Gold Canyon, Arizona, which is located in Pinal County.
4. Plaintiffs are natural persons who are allegedly obligated to pay a debt which was incurred for personal, family, or household purposes.
5. Plaintiffs are "consumers" as that term is defined by the FDCPA 15 U.S.C. § 1692a(3).
6. Defendant Gurstel Law Firm, P.C., p.k.a. Gurstel Chargo, P.A., ("Gurstel") is a Minnesota professional corporation.
7. Gurstel is a consumer law firm whose attorneys regularly collect or attempt to collect debts owed or asserted to be owed or due another.
8. Gurstel is a "debt collector" as that term is defined by the FDCPA 15 U.S.C. § 1692a(6).

IV. Factual Allegations

9. Plaintiffs incurred a debt through a credit card account with Capital One Bank (USA), N.A.
10. The Capital One account was used for personal, family, or house-

1 hold purposes.

2 11. Plaintiffs subsequently defaulted on the Capital One account.

3 12. After default, Capital One assigned the debt to Gurstel for collec-
4 tion purposes.

5 13. On or about May 19, 2016, Gurstel filed a law suit on behalf of
6 Capital One in an effort to collect the debt from Plaintiffs.

7 14. Gurstel prepared and filed the suit in the Williams Justice Court,
8 which is located in Williams, Arizona, which is in Coconino
9 County. (Copy of Summons and Complaint attached hereto as
10 Exhibit A)

11 15. At the time the suit was filed, Plaintiffs did not reside within the
12 boundaries of the Williams Justice Court.

13 16. At the time the suit was filed, Plaintiffs had never lived in
14 Williams, Arizona or within the boundaries of the Williams Justice
15 Court.

16 17. At the time the suit was filed, Plaintiffs resided in Gold Canyon,
17 Arizona, which is Pinal County.

18 18. At the time Gurstel filed the suit, it knew that Plaintiffs did not
19 reside within the boundaries of the William Justice Court. (*Id.*)

20 19. At the time the suit was filed, the address Capital One furnished to
21 Gurstel was in Gold Canyon. (*Id.*)

22 20. At the time Gurstel arranged for service of process, it knew that
23 Plaintiffs were not located within the boundaries of the Williams
24 Justice Court.

25 21. After the suit was filed, Gurstel served or caused Plaintiffs to be

1 served with the summons and complaint in Gold Canyon.

2 22. In the summons prepared by Gurstel, it correctly lists Plaintiffs'
3 home address in Gold Canyon, Arizona. (*Id.*)

4 23. Plaintiffs' home address is not within the precinct of the Williams
5 Justice Court, but rather lies in the Apache Junction Justice Court,
6 Precinct #7, which is located in Apache Junction, Arizona.

7 24. Plaintiffs did not sign the contract with Capital One within the
8 boundaries of the Williams Justice Court.

9 25. Upon being served with the justice court summons and complaint,
10 Plaintiffs were required to hire and pay legal counsel to assist them
11 in moving the suit to the Apache Junction Justice Court.

12 26. Plaintiffs filed a motion to transfer venue of the case to the Apache
13 Junction Justice Court.

14 27. The Williams Justice Court granted Plaintiffs' motion to transfer,
15 finding that venue was not proper in the Williams Justice Court,
16 and that venue was proper in the Apache Junction Justice Court.

17 28. Defendant filed the lawsuit in the wrong venue in violation of the
18 FDCPA, 15 U.S.C. § 1692i(a)(2).

19 29. As a result of Defendant's actions as outlined above, Plaintiffs have
20 suffered actual damages, including emotional distress and out of
21 pocket expenses.

22 **V. Causes of Action**

23 **a. Fair Debt Collection Practices Act**

24 30. Plaintiffs repeat, reallege, and incorporate by reference the forego-
25 ing paragraphs.

31. Defendant's violations of the FDCPA include, but are not necessarily limited to, 15 U.S.C. § 1692i(a)(2).

32. As a direct result and proximate cause of Defendant's actions in violation of the FDCPA, Plaintiffs have suffered actual damages.

VI. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered against Defendant for:

- a) Actual damages under the FDCPA;
- b) Statutory damages under the FDCPA;
- c) Costs and reasonable attorney's fees pursuant to the FDCPA;
- and
- d) Such other relief as may be just and proper.

DATED May 19, 2017 .

s/ Floyd W. Bybee
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